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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,629	01/14/2004	Mark James Kline	8194C	4664

27752 7590 03/27/2007
THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
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EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/757,629

Applicant(s)

KLINE ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5 and 8-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

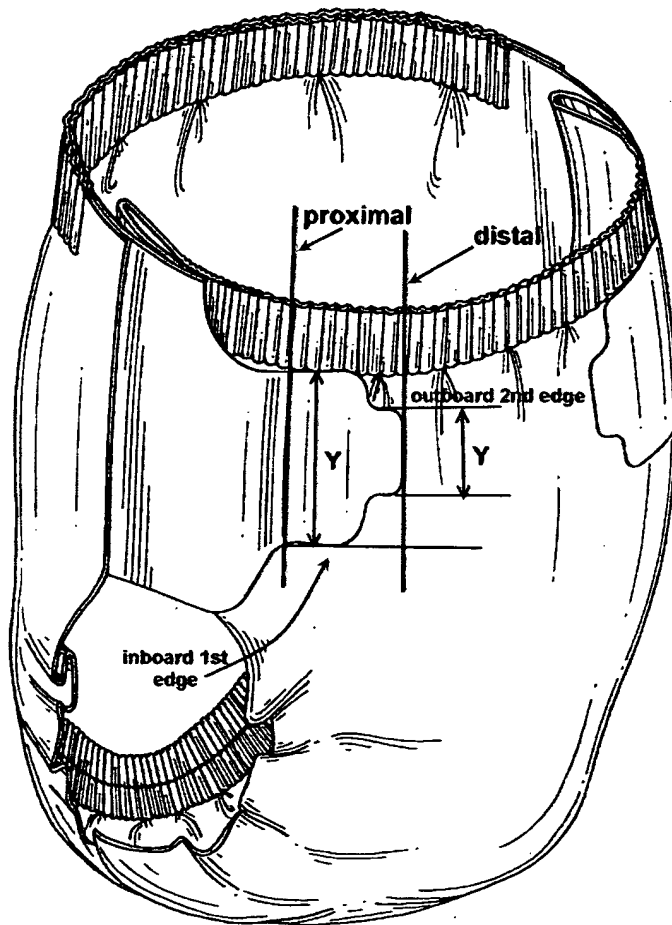
Applicant's arguments filed 31 January 2007 have been fully considered but they are not persuasive.

1. In response to Applicant's arguments that "the Vukos reference appears to illustrate an outside of a fastening ear, not a fastening element as recited in part in the Applicant's independent claims 1 and 17" (see Remarks pages 2-3), Examiner maintains Vukos teaches a "fastening element" as discussed below with respect to claim 1. Furthermore, since the Applicant has described the "fastening element" as a surface fastener such as a tape tab, hook and loop or a combination of these diverse and other elements (see instant Specification page 12, lines 22-27), the ear of Vukos is a fastening element as defined by Applicant since it connects and thus fastens the front panel to the back panel of the article to be placed on a user and forming a waist opening (see additionally figure 1).

2. In response to Applicant's argument that Vukos does not teach or suggest an effective dimension Y as required by the independent claims (see Remarks page 3), Examiner maintains that Vukos discloses the fastening element/ear has an effective dimension Y extending in the longitudinal direction that increases from the distal/center edge to the proximal edge (see annotated Figure 1 below). Furthermore, it is noted that Vukos is not relied upon for a teaching of a particular dimension as alleged by Applicant, but rather is relied upon for disclosing the general recitation by Applicant of having an "effective dimension Y increasing from a distal edge of the first fastening

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element to a proximal edge of the first fastening element” as shown below. There is no positive recitation in the claims that requires the Y dimension to be a particular measured size so long as it is relatively increasing in the longitudinal Y dimension.



VUKOS

FIG. 1

3. In response to Applicant's argument that Vukos doesn't disclose "a fastening element covers or forms at least a portion of the surface of one material and joins that surface to at least a portion of a surface of another material" (see Remarks page 3), it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from

the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

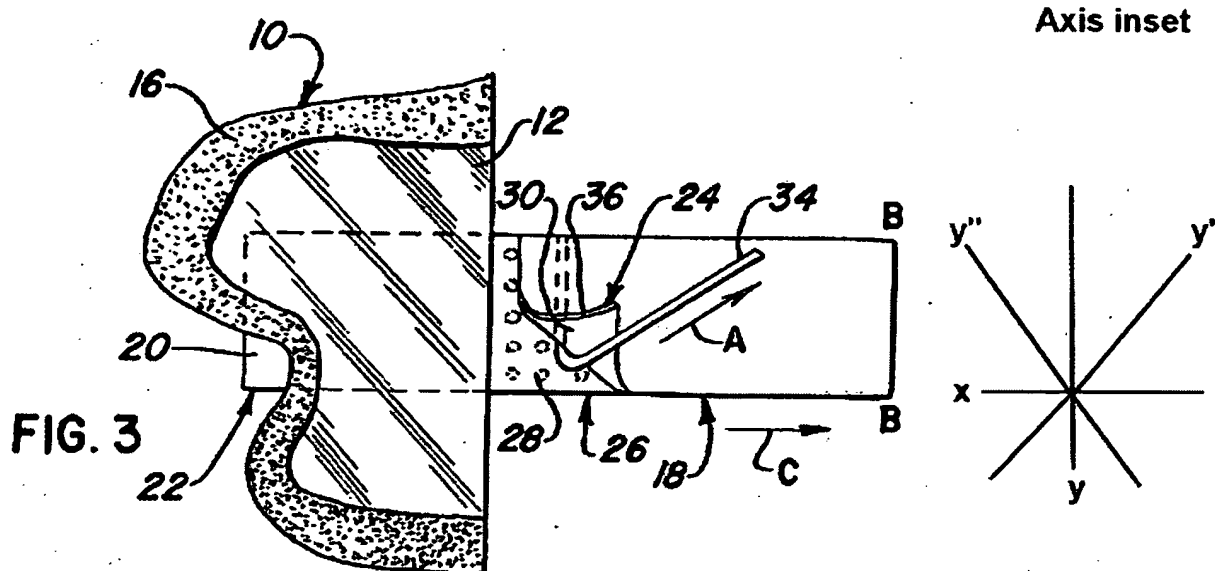
The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 4-5, 8-10 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt (US 3,797,495 herein 'Schmidt') in view of Vukos et al. (US Des. 422,078), and further in view of Tritsch (US 3,937,221). Regarding claims 1, 4, 8-9, 11, and 16-19 Schmidt discloses a diaper 20 with absorbent pad/chassis 22 to be worn about a wearer (column 6, lines 39-43 and figure 2) comprising: a surface fastening system 28 with first tape base/fastening element 12 and protective cover strip/second facing fastening element 30, the surface fastening system 28 including an effective Y dimension substantially parallel to the longitudinal article axis (column 6, lines 63-68, figure 3), wherein the backing tape used in surface fastening system 28 is able to withstand different tear and tensile forces applied across the tape in varying directions and degrees when user moves (column 2, lines 1-11). Schmidt *does not expressly disclose* the fastening system itself is resistant to different levels of resistance in different directions or a Y dimension increasing from a distal to proximal edge of the first fastening system. **Vukos** discloses disposable absorbent article to be worn about a user with a Y dimension increasing from a distal to proximal edge having a first longitudinally inboard edge longer than a second longitudinally outboard edge and an overall tab fastener curvilinear configuration capable of being gripped more easily by a caregiver or

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user (see annotated figure 1 above). One would be motivated to modify the fastening system of Schmidt with the increasing Y-dimension and curvilinear edges of Vukos since doing so would provide an easier mechanism to grip and open the tab and since both references disclose wearing articles with fastening systems for fastening about the waist of a user. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the fastening system, thus providing a fastening system with an increasing Y-dimension from the distal to proximal edge.

Schmidt/Vukos *do not expressly disclose* the fastening system has different levels of resistance in different directions from the engaged to disengaged configuration. Tritsch discloses diaper 10 with tab 18 having separator string 34, where separation is effected by grasping the protruding portion of string 34 and peeling end portion 24 away from central portion from central portion 26 in the diagonal direction of arrow A (i.e.: in a plane non-parallel to the xz-plane/first peel load), thereby lifting up one corner of the folded-over end portion 24 (column 3, line 8, column 4, lines 38-40, column 5, lines 1-6 and figure 3). Tritsch further discloses the user is then able to grasp free end 24 of tab 18 near end border 36 and pull in a direction indicated by arrow C (in a plane parallel to the xz-plane/second peel load). Since the user must pull in a plane non-parallel to the xz-plane/first peel load first as indicated by arrow A to be able to subsequently pull in a plane parallel to the xz-plane/second peel load as indicated by arrow C, the first diagonal and curvilinear peel load required to start the tab lifting action is greater than the second parallel peel load.



One would be motivated to modify the curvilinear pressure sensitive adhesive fastener of Schmidt/Vukos with the pressure sensitive adhesive multi-directional resistance to force in different direction fastener of Trisch for improved fastener stability in relation to the article during forces generated by the wearer during use since the references are in the same field of endeavor; disposable absorbent wearing articles having pressure-sensitive adhesive fastening means around a wearer's waist. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the fasteners, thus providing a fastener with resistance to peel force in different directions.

Alternatively, the peak peel load value from the $y'z$ plane through the $y''z$ plane will inherently be greater than the second peak peel load value in the xz plane since it takes more force and inertia to begin disengagement of the fastener by pulling in a non-linear diagonal and sideways motion such as from the $y'z$ through the $y''z$ planes than it

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does to pull entirely in an upward and "out-of the page" xz plane direction in a shear mode fashion after pulling has begun on the fastener (see also Applicant's own admission to this point on page 14, lines 4-6 of the instant Specification).

Regarding claim 5 Schmidt/Vukos further disclose protective cover strip/second facing fastening element 30 having a portion of the lower edge being unjoined or at least partially detached from the underlying structure (figure 3).

Regarding claim 10 Vukos further discloses the disposable absorbent article with first and second fastening elements attached to form a waist opening and a pair of leg openings (figures 1 and 4).

Regarding claims 12-15 Schmidt/Vukos/Tritsch do not expressly disclose peak peel load or plane projection angle values. Peak peel load and plane projection angles are result effective variables because it is well known to those of ordinary skill in the art that they are at a result of the size of the fastening system and article and inherently dependent on the user's force applied from engagement to the disengagement period that will vary amongst users. Furthermore, by Applicant's own admission, peak peel load is a result effective variable since it is dependent on the angle alpha exerted during peeling (see page 15, lines 9-16 of the instant Specification). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Schmidt/Vukos/Tritsch with peak peel load and plane projection angles since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill
Examiner
Art Unit 3761

LCH

LCH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

Tatyana Zalukaeva